

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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HAPAG-LLOYD AKTIENGESELLSCHAFT,

Plaintiff,

14 Civ. 9949 (VEC)

-against-

U.S. OIL TRADING LLC, O.W. BUNKER
GERMANY GMBH, O.W. BUNKER & TRADING
A/S, O.W. BUNKER USA, INC., ING BANK N.V.,
CRÉDIT AGRICOLE CIB,

**U.S. OIL TRADING LLC'S
CLAIMS AGAINST
BOND NO. SNO0000012**

Defendants.
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Defendant, U.S. Oil Trading LLC ("USOT"), by its attorneys Clyde & Co US LLP, hereby submits its claims against Bond No. SNO0000012 (the "Bond"), which was tendered by plaintiff Hapag-Lloyd Aktiengesellschaft ("HLAG") for deposit into the Registry of the Court and approved by Order of the Court dated December 19, 2014 (Docket No. 5), and states upon information and belief as follows:

A. M/V SOFIA EXPRESS

1. On or about October 23, 2014, HLAG sent a purchase order to defendant O.W. Bunker Germany GmbH ("O.W. Germany") to arrange for the delivery of bunker fuel to the M/V SOFIA EXPRESS at the port of Tacoma on or about October 29, 2014.

2. The purchase order expressly confirms that USOT will act as the physical supplier of the bunkers to the M/V SOFIA EXPRESS.

3. The contract between HLAG and O.W. Germany for the purchase and sale of bunkers for the subject delivery to the M/V SOFIA EXPRESS is subject to German law.

4. On or about October 28, 2014, USOT issued its sales confirmation and

sales authorization to O.W. Bunker & Trading A/S (“O.W. Denmark”) for delivery of the bunkers to the M/V SOFIA EXPRESS at the port of Tacoma on or about October 29, 2014.

5. On or about October 29, 2014, USOT delivered approximately 2,680.22 metric tons of bunker fuel to the M/V SOFIA EXPRESS at the port of Tacoma, which the vessel accepted and acknowledged by stamping USOT’s bunker delivery receipt for the delivery.

6. USOT’s bunker delivery receipt for the subject delivery to the M/V SOFIA EXPRESS states in relevant part:

DISCLAIMERS: No disclaimer stamp of any type or form will be accepted on this bunker certificate, nor should any such stamp . . . alter, change or waive U.S. Oil’s Maritime Lien against the vessel or waive the vessel’s ultimate responsibility and liability for the debt incurred through this transaction.

* * * *

MARITIME LIENS: All disputes arising out of this transaction shall be interpreted and enforced in accordance with the general maritime law of the United States of America and all statutes related thereto.

7. On or about October 29, 2014, USOT issued its Invoice No. BWTD 83463 to O.W. Denmark in the amount of \$1,315,507.80 for the subject delivery of bunkers to the M/V SOFIA EXPRESS.

8. Payment was due to USOT by November 28, 2014, but USOT has not been paid for the amounts due under USOT’s Invoice No. BWTD 83463 despite due demands for payment, and has suffered damages as a result in the sum of \$1,315,507.80, plus interest, costs and attorneys’ fees, as nearly as can be presently determined.

9. Pursuant to the Commercial Instruments and Maritime Liens Act, 46 U.S.C. §§ 31301, *et seq.* (the “Lien Act”), USOT possesses a valid maritime lien against the M/V

SOFIA EXPRESS for the full amount due under USOT's Invoice No. BWTD 83463, plus interest and costs.

10. USOT has the statutory right to exercise all the rights and remedies provided to holders of maritime liens, including the right to enforce its maritime lien against the Bond, which the Court has ruled to represent the substitute *res* for the M/V SOFIA EXPRESS *in rem* pursuant to the Court's Order dated December 19, 2014.

B. M/V SANTA ROBERTA

11. On or about October 1, 2014, HLAG, the alleged time charterer of the M/V SANTA ROBERTA, sent a purchase order to O.W. Germany to arrange for the delivery of bunker fuel to the M/V SANTA ROBERTA at the port of Tacoma on or about October 9, 2014.

12. The purchase order expressly confirms that USOT will act as the physical supplier of the bunkers to the M/V SANTA ROBERTA.

13. The contract between HLAG and O.W. Germany for the purchase and sale of bunkers for the subject delivery to the M/V SANTA ROBERTA is subject to German law.

14. On or about October 6, 2014, USOT issued its sales confirmation and sales authorization to O.W. Denmark for delivery of the bunkers to the M/V SANTA ROBERTA at the port of Tacoma on or about October 9, 2014.

15. On or about October 9, 2014, USOT delivered approximately 2,700.11 metric tons of bunker fuel to the M/V SANTA ROBERTA at the port of Tacoma, Washington, which the vessel accepted and acknowledged by stamping USOT's bunker delivery receipt for the delivery.

16. USOT's bunker delivery receipt for the subject delivery to the M/V SANTA ROBERTA states in relevant part:

DISCLAIMERS: No disclaimer stamp of any type or form will be accepted on this bunker certificate, nor should any such stamp . . . alter, change or waive U.S. Oil's Maritime Lien against the vessel or waive the vessel's ultimate responsibility and liability for the debt incurred through this transaction.

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MARITIME LIENS: All disputes arising out of this transaction shall be interpreted and enforced in accordance with the general maritime law of the United States of America and all statutes related thereto.

17. On or about October 9, 2014, O.W. Germany issued its Invoice No. 119-29378 to HLAG in the amount of \$1,495,860.94 for the subject delivery of bunkers by USOT to the M/V SANTA ROBERTA.

18. HLAG paid O.W. Germany the amount of \$1,495,860.94 for the subject delivery of bunkers by USOT to the M/V SANTA ROBERTA.

19. On or about October 9, 2014, USOT issued its Invoice No. BWTD 83441 to O.W. Denmark in the amount of \$1,481,860.28 for the delivery of bunkers to the M/V SANTA ROBERTA.

20. Payment was due to USOT by November 8, 2014, but USOT has not been paid for the amounts due under USOT's Invoice No. BWTD 83441 despite due demands for payment, and has suffered damages as a result in the sum of \$1,481,860.28, plus interest, costs and attorneys' fees, as nearly as can be presently determined.

21. Pursuant to the Lien Act, USOT possesses a valid maritime lien against the M/V SANTA ROBERTA for the full amount due under USOT's Invoice No. BWTD 83441, plus interest and costs.

22. USOT has the statutory right to exercise all the rights and remedies provided to holders of maritime liens, including the right to enforce its maritime lien against the

Bond, which the Court has ruled to represent the substitute *res* for the M/V SANTA ROBERTA *in rem* pursuant to the Court's Order dated December 19, 2014.

C. M/V SEASPAN HAMBURG

23. On or about October 13, 2014, HLAG, the alleged time charterer of the M/V SEASPAN HAMBURG, sent a purchase order to O.W. Germany to arrange for the delivery of bunker fuel to the M/V SEASPAN HAMBURG at the port of Tacoma on or about October 16, 2014.

24. The purchase order expressly confirms that USOT will act as the physical supplier of the bunkers to the M/V SEASPAN HAMBURG.

25. The contract between HLAG and O.W. Germany for the purchase and sale of bunkers for the subject delivery to the M/V SEASPAN HAMBURG is subject to German law.

26. On or about October 13, 2014, USOT issued its sales confirmation and sales authorization to O.W. Denmark for delivery of the bunkers to the M/V SEASPAN HAMBURG at the port of Tacoma on or about October 16, 2014.

27. On or about October 16, 2014, USOT delivered approximately 2,900.21 metric tons of bunker fuel to the M/V SEASPAN HAMBURG at the port of Tacoma, Washington, which the vessel accepted and acknowledged by stamping USOT's bunker delivery receipt for the delivery.

28. USOT's bunker delivery receipt for the subject delivery to the M/V SEASPAN HAMBURG states in relevant part:

DISCLAIMERS: No disclaimer stamp of any type or form will be accepted on this bunker certificate, nor should any such stamp . . . alter, change or waive U.S. Oil's Maritime Lien against the vessel or waive the vessel's ultimate responsibility and liability for the debt incurred through this transaction.

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MARITIME LIENS: All disputes arising out of this transaction shall be interpreted and enforced in accordance with the general maritime law of the United States of America and all statutes related thereto.

29. On or about October 16, 2014, USOT issued its Invoice No. BWTD 83450 to O.W. Denmark in the amount of \$1,507,408.99 for the delivery of bunkers to the M/V SEASPAN HAMBURG.

30. Payment was due to USOT by November 17, 2014, but USOT has not been paid for the amounts due under USOT's Invoice No. BWTD 83450 despite due demands for payment, and has suffered damages as result in the sum of \$1,507,408.99, plus interest, costs and attorneys' fees, as nearly as can be presently determined.

31. Pursuant to the Lien Act, USOT possesses a valid maritime lien against the M/V SEASPAN HAMBURG for the full amount due under USOT's Invoice No. BWTD 83450, plus interest and costs.

32. USOT has the statutory right to exercise all the rights and remedies provided to holders of maritime liens, including the right to enforce its maritime lien against the Bond, which the Court has ruled to represent the substitute *res* for the M/V SEASPAN HAMBURG *in rem* pursuant to the Court's Order dated December 19, 2014.

WHEREFORE, defendant USOT prays:

1. That judgment in the sum of \$4,304,777.07 be entered in favor of USOT and against the Bond, *in rem*, together with interest, costs and attorneys' fees;
2. That the Bond be applied to satisfy USOT's maritime lien claims against

the M/V SOFIA EXPRESS, M/V SANTA ROBERTA and M/V SEASPAN HAMBURG, *in rem*, together with interest, costs and attorneys' fees; and

3. That USOT have such other, further and different relief as the Court may deem just and proper in the premises.

Dated: New York, New York
February 26, 2016

CLYDE & Co US LLP

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